



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel
B-241879

April 26, 1991

Edward Curvey, Director,
Contracts and Acquisition Division,
Internal Revenue Service,
Washington, DC 20224

Dear Mr. Curvey:

This responds to your request of October 4, 1990, asking that we relieve certifying officers at ten Internal Revenue Service (IRS) regional offices of liability for improper payments made for computer services without the proper delegation of procurement authority from the General Services Administration. For the reasons indicated below, relief is granted.

According to your submission, the improper payments arose when IRS extended a contract for maintenance of automatic data processing equipment (ADPE). After extending the original contract, which was to expire on September 30, 1989, to December 31, 1989, the IRS needed a second extension and submitted an agency procurement request to the General Services Administration (GSA). Because of the cost of the ADPE maintenance required, authority for the procurement was required from GSA under the Federal Information Resources Management Regulations (FIRMR) at 41 C.F.R. § 201-23.104-3 (1990). Consequently, IRS sought a specific delegation of procurement authority from GSA for a two month period from January 1, 1990 to February 28, 1990 with additional one-month options through April 30, 1990.

GSA issued the amended delegation of procurement authority to IRS on January 18, 1990, making no mention of the effective dates. Assuming that the delegation had retroactive effect to January 1, the IRS continued paying for services provided under the contract. In subsequent communications with GSA, the IRS learned that the delegation became effective only on the date issued, and had no retroactive effect.

You conclude that the IRS had no authority to contract for ADPE maintenance services from January 1 through January 17, 1990, an 18-day period before GSA's delegation became effective, and for which period the contractor billed your agency for services provided. The impropriety in the situation you describe is that the certifying officers certified payments under a contract that was not authorized because of the lack of the proper delegation of procurement

authority. You request that we relieve the certifying officials under 31 U.S.C. § 3528(b)(1988) for these payments.

The criteria for relieving certifying officers under 31 U.S.C. § 3528(b) are whether:

"(A) the certification was based on official records and the official did not know, and by reasonable diligence and inquiry could not have discovered the correct information; or

(B) (i) the obligation was incurred in good faith;
 (ii) no law specifically prohibited the payment;
 and
 (iii) the United States Government received value for the payment."

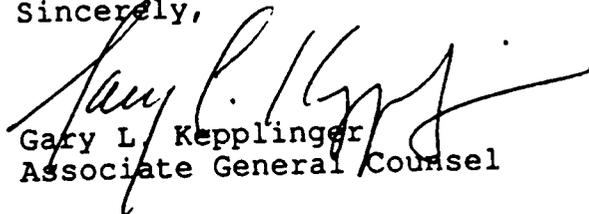
With regard to (A) the certifying officials based their certifications on official records which, according to the submission, indicated that the services were received and that the contractor's invoices were acceptable. Only later, when other IRS officials discussed the matter with GSA, did the improper retroactive application of the delegation of procurement authority become apparent. It appears that the certifying officials did not discover the correct information because the delegation contained no effective date other than referencing IRS's request. Whether or not officials acted with "reasonable diligence and inquiry" in checking the effective dates of the delegation is not clear from the record.

However, the relief criteria for certifying officers are written in the alternative and it appears that all three elements of (B)--good faith, no law prohibiting the expenditure,^{1/} and the receipt of value by the government--are

^{1/} While no law or policy prohibits the purchase of ADPE maintenance services in this instance, we note that IRS's agency-designated senior official for purposes of the Federal Information Resources Management Regulations is responsible for compliance with applicable laws and regulations regarding GSA's delegation of procurement authority. See 41 C.F.R. § 201-23.112-1^V(1990).

present and, accordingly, relief is proper under this authority. See B-222048, Feb. 10, 1987. Accordingly, the certifying officials are relieved of personal liability for their improper certifications.

Sincerely,


Gary L. Kepplinger
Associate General Counsel

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